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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 457

C. J. ADAMS, ALIAS CHARLES ADAMS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

OPINION BELOW

The majority (R. 136–141) and dissenting (R. 141–142) opinions in the circuit court of appeals are not yet reported.

JURISDICTION

The judgment of the circuit court of appeals was entered July 9, 1946 (R. 143), and a petition for rehearing (R. 144–146) was denied August 5, 1946 (R. 147). The petition for a writ of certiorari was filed September 4, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act

of February 13, 1925. See also Rules 37 (b) (2) and 45 (a) of the Federal Rules of Criminal Procedure.

QUESTION PRESENTED

Whether the evidence is sufficient to sustain the conviction of petitioner for aiding and abetting designated persons knowingly to fail to register for the draft and for conspiring to do so.

STATUTE INVOLVED

Section 11 of the Selective Training and Service Act of 1940, 54 Stat. 885 (50 U. S. C. App. 311), provides in part as follows:

> Any person * * * who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act * * * or any person or persons who shall * * * conspire to do so, shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * *.

STATEMENT

Petitioner was convicted (R. 32) in the District Court for the Southern District of Alabama on counts 2, 4, 6, and 7 of an indictment in seven counts (R. 2–17) charging violations of Section 11 of the Selective Training and Service Act.

Counts 2, 4, and 6 (R. 3–4, 6–7, 8–9) alleged that petitioner, Carrie Lee Towns, and Walter Towns knowingly counselled, aided, and abetted Samuel B. Towns, Samuel C. Towns, and John Towns, respectively, unlawfully to fail to register with their local draft board[1]; count 7 (R. 9–17) charged that the defendants and the Towns' boys conspired to commit the crimes described in the other counts of the indictment. Petitioner was sentenced generally to imprisonment for one year and a day and to pay a fine of $250 (R. 33).[2] Upon appeal to the Circuit Court of Appeals for the Fifth Circuit, the judgment was affirmed, one judge dissenting (R. 143).

The codefendants Carrie Lee Towns and Walter Towns are the parents of Samuel B. Towns and Samuel C. Towns, twin brothers who were born in 1923 (R. 54, 55, 56, 58, 62, 63, 74), and of John Towns, who is older than his twin brothers (R. 57). Notwithstanding the fact that in 1944 the boys were over eighteen years of age and had a duty to register for the draft, they failed to do so (R. 69). When the local draft board inquired into their failure to register, the mother, Carrie Lee Towns, informed the board that the boys were

[1] Counts 1, 3, and 5 were identical with counts 2, 4, and 6 except that a different draft board was alleged as the board with which the boys should have registered. These counts were dismissed upon motion of the Government at the close of the evidence (R. 118).

[2] Petitioner's codefendants previously had pleaded guilty to the indictment (see R. 121).

not yet of draft age, and in support of this assertion she furnished the board delayed birth certificates for the boys showing that the twins were born in 1930 and that John was born in 1928 (R. 70–74). This would have made the twins fourteen years old instead of twenty. The delayed birth certificates had been fraudulently obtained and the Government's theory was that petitioner participated in the frauds by which the mother obtained them. The evidence bearing on petitioner's part in the scheme may be summarized as follows:

Petitioner testified that he is a notary public (R. 108) and that he is thoroughly familiar with the procedure under Alabama law for obtaining birth certificates (R. 105–106, 108). He maintained a supply of forms used for that purpose (R. 107) and on a previous occasion in February 1944, he had acknowledged Carrie Lee Towns' signature on an application for a birth certificate for another child of the Towns (R. 112–113). On March 23, 1944, after a meeting with members of the draft board, Carrie Lee Towns came to petitioner's office and "said she wanted me to make out papers to get birth certificates for her children" (R. 111). She brought with her a Bible which purportedly contained entries going back to 1910 (R. 99), and showed false birth dates for the boys. Petitioner filled in the necessary forms and acknowledged the mother's signature on them. He explained

to her the necessity for supporting documents and on the following day she brought to him certificates of the custodian of the records of her church, which stated that those records showed that the three boys were under eighteen years of age.[3] The three boys came to petitioner's office on March 25 and signed the necessary forms and petitioner acknowledged their signatures. Petitioner also prepared substantially identical supporting certificates for each of the boys concerning the entries in the Bible. (R. 103–116.) The certificate for John Towns reads (see R. 138):

> I, C. J. Adams, a Notary Public in and for said state and county hereby certify that I have this day examined the Family Bible now in the possession of Carrie Lee Towns which was published by Collins Clear-Type Press in the year of year not shown and the facts below appear to have been recorded many years ago. The Bible shows John Towns to have been born at Pleasant Hill, Ala.; date of birth Oct. 9, 1928; name of father Walter Towns and name of mother Carrie Lee Towns.

On the basis of these documents the delayed birth certificates were obtained (R. 77).

It was developed at the trial that the bible, printed in England, was not an old family bible.

[3] The church official testified at the trial that the certificates were false and that he had signed them at the request of Carrie Lee Towns (R. 80–81).

For it was shown that although the bible contained no publication date, it contained, at the place where such a date might be found, a statement that the publisher was not licensed to print the book until March 10, 1939 (R. 99, 103). An F. B. I. agent testified that petitioner admitted to him that he filled in the various forms and acknowledged the signatures, and that petitioner said that when the three boys came to his office he could "tell they were over eighteen," but he nevertheless proceeded to complete the papers (R. 94–97). This testimony was confirmed by another witness (R. 97–98), although denied by petitioner. The appearance of the boys, in itself, was evidence for the jury to consider in determining whether petitioner believed they were fourteen years old, when in fact, they were over twenty.[4] It was also established that petitioner had previously pleaded guilty to an indict-

[4] The United States Attorney urged in the government's brief in the circuit court of appeals (p. 2) that the appearance of the boys was such that no one could reasonably mistake them to be as young as they pretended to be. He pointed out that one of the twins, who claimed to be only fourteen years old, "stood some six feet and weighed approximately two hundred pounds"; that the other twin, while smaller in stature, clearly revealed his age; and that the older brother, John, plainly appeared to be an adult. The twin brothers were witnesses at petitioner's trial (R. 87, 91), and the jury thus had an opportunity to observe whether petitioner might reasonably have failed to become aware of the fraud being perpetrated in respect of the true ages of the boys.

ment charging that he falsely certified, as a notary public, that a person who was actually deceased had appeared before him, which certificate was later forwarded to the Veterans' Administration (R. 117).

Petitioner denied that he had ever been apprised of the purpose for which the delayed birth certificates were to be used (R. 104, 115) and he testified that he told the F. B. I. agent that he said the boys looked to be over fifteen years of age, not eighteen (R. 105, 114).

DISCUSSION

Petitioner's sole contention (Pet. 6-7, 13-16) is that the evidence is insufficient to support the jury's verdict. We agree with petitioner that no evidence of criminality on his part is shown by the mere fact that he acknowledged the signatures of the various members of the Towns family on the forms and affidavits submitted to the Alabama authorities as a basis for securing the delayed birth certificates. For, as petitioner argues, a notary public does not certify to the truthfulness of representations made in documents which he acknowledges. We are unable to agree with the petitioner, however, that the evidence as a whole furnished no basis for the jury's verdict. If he did in fact know that the certificates were false and that they were to be used in violating the Selective Service Act he would have been

guilty of aiding and abetting a violation of the Act.

As we have shown in the statement, after Carrie Lee Towns brought the bible to petitioner, he executed a certificate for each of the three boys in which he stated, *inter alia,* that he had examined the bible and that the facts relating to the boys' birthdates "appear to have been recorded many years ago." There was evidence from which the jury could have concluded that this representation was false and that petitioner was aware of its falsity. It was undisputed at the trial that the bible was not published until some time after March 10, 1939, when the license was issued, and thus was less than five years old when petitioner examined it in March 1944. Petitioner denied that he had read the statement on the title page of the bible (R. 104) as to the date when the printing was licensed. But the licensing date was on the page where the publication date of a book is usually found. Hence, it was reasonable for the jury to conclude that in seeking to ascertain the publication date of the bible, as he was required to do when explicitly attesting that it was published in a "year not shown" and that the facts therein set forth "appeared to have been recorded many years ago" (see *supra,* p. 5), petitioner must have discovered that it could not have been printed before 1939 or did not make any effort to discover when it was printed. Coupled

with this is the fact that the three boys came to the petitioner's office on March 25, 1944, and he had an opportunity to observe for himself whether they appeared to be fourteen and sixteen years of age, respectively, as their mother had represented them to be, instead of over twenty. The corroborated testimony of an F. B. I. agent, which the jury was entitled to believe, was that petitioner admitted that when the boys came to his office he could tell that they were over eighteen years of age.

Clearly there was evidence to support the jury's verdict that petitioner was aware of the falsity of the representation as to the ages of the boys.

Petitioner denied at the trial (R. 115) that he knew the purpose for which the delayed birth certificates were being obtained. But, as the circuit court of appeals pointed out (R. 139):

> In the light of appellant's experience in having filled out over one thousand papers in connection with the Selective Service Act [see R. 106], the date given in the applications for delayed birth certificates would have informed him that the accompanying certificates executed by him would be used only for the single purpose of evading registration under the Selective Service Act.

At least in view of the known circumstances of the period with respect to the drafting of boys of 18 and over and his knowledge that an effort was being made to conceal the fact that the boys

were over 18, a jury could reasonably have inferred that petitioner knew that the false statements were to be used in violating the Selective Service Act. Considered in the light of the other evidence showing that it was petitioner who was familiar with and advised the Towns of the Alabama requirements for securing delayed birth certificates and that petitioner had pleaded guilty in another case to falsely certifying to the Veterans Administration that a person who was then deceased had appeared before him, the evidence to which we have alluded permitted the jury to conclude, we think, that at the very least petitioner was aware of the fraudulent scheme, that he knew that the entries in the bible were false, and that he falsely certified that the entries in the bible appeared to have been made "many years ago" with a view to assisting the Towns brothers to secure delayed birth certificates showing false ages and by this means to evade registration with their draft board.

If this Court concludes that the evidence in support of the jury's verdict is adequate, the case may be disposed of by a denial of the petition for a writ of certiorari. On the other hand, if the Court thinks the evidence is insufficient, it is respectfully suggested that, since the record is short and the narrow issue is purely factual, an appropriate disposition would be to grant the writ and reverse the judgment below without addi-

tional briefs or argument. Cf. *Oriolo* v. *United States*, 324 U. S. 824; *Womble* v. *United States*, 324 U. S. 830.

Respectfully submitted.

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